UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
and Jon Wellinghoff.

Wisconsin Power & Light Co.	Docket No. ER06-1517-000
Wisconsin Power & Light Co.	Docket No. ER06-1518-000
Wisconsin Public Power Inc., Municipal Wholesale Power Group, and Great Lakes Utilities	Docket No. EL07-14-000

v.

Wisconsin Power & Light Co.

ORDER ACCEPTING AND SUSPENDING FILINGS AND INSTITUTING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued December 22, 2006)

1. On September 25, 2006, in Docket Nos. ER06-1517-000 and ER06-1518-000, Wisconsin Power & Light Co. (WPL) filed proposed changes to the rates it charges its partial requirements customers under its PR-1 Tariff (FERC Tariff Volume No. 11) and the rates it charges its full requirements customers under its WA-2A Tariff (FERC Tariff Volume No. 13) and its W-3A Tariff (FERC Tariff Volume No. 12). On November 1, 2006, in Docket No. EL07-14-000, Wisconsin Public Power Inc. (WPPI), Municipal Wholesale Power Group (MWPG), and Great Lakes Utilities (GLU) (collectively, Wisconsin Publics) filed a complaint against WPL.

2. In this order, we accept, suspend, and make effective subject to refund, the proposed rate changes and establish hearing and settlement judge procedures. We also set the complaint for hearing and settlement judge procedures. Finally, we consolidate the proceedings.

Docket Nos. ER06-1517-000 and ER06-1518-000

3. WPL proposes to replace the current stated rates for wholesale partial and full requirements service under the tariffs with new formula rates. Under the proposed formulas, the capacity charge and the non-fuel energy charge will change each June 1 to reflect costs incurred during the preceding calendar year, and the energy charge for fuel will change monthly to reflect projected fuel costs. The capacity and non-fuel energy charges will be trued-up annually to ensure that annual revenue recovery matches annual costs, and the energy charge for fuel will be trued-up monthly to ensure that monthly energy-related revenue recovery matches monthly energy-related costs.

4. WPL explains that, with respect to WPPI, it is constrained by the terms of the First Revised Power Supply Agreement dated April 1, 2005 (PSA)[1] between it and WPPI, the single customer served under the current stated rates in the PR-1 Tariff, to implement only rate design neutral changes until the Commission acts on the merits of WPL's proposal and accepts the rates no longer subject to refund. Specifically, WPL proposed changes to rate design and the terms and conditions of service that apply to WPPI can take effect only prospectively after Commission approval of a settlement or after acceptance of rates in a final order. However, WPL states it faces no such restrictions from making changes to the rate level that applies to WPPI. WPL therefore proposes an interim rate under the PR-1 Tariff which would increase the current stated rates to WPPI by the same percentage as the increase in charges under the proposed formula. WPL asserts that its proposed interim rate is rate design neutral and does not violate the limitation on making rate design changes.

5. WPL requests an effective date of January 1, 2007. Based on 2005 cost and financial data that serve as inputs to the formulas beginning January 1, 2007, the proposal would increase annual charges for partial requirements service under the PR-1 Tariff by approximately $7.9 million over the tariff's current stated rates and increase annual charges for full requirements service under the W-2A Tariff and W-3A Tariff by $1.3 million over the tariffs' current stated rates.

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[1] WPL and WPPI reference the PSA, but neither provides a copy of the agreement nor do they cite a proceeding where the PSA was submitted for filing with the Commission. The Commission has no record that the PSA was ever submitted for filing with the Commission.

6. WPL asserts that the proposed formula rates will allow the charges under the tariffs to better track WPL's actual cost of service and reduce administrative costs to both WPL and customers.

Notices, Interventions and Answers

7. A combined notice of the filings was published in the *Federal Register*, 71 Fed. Reg. 59100 (2006), with interventions and protests due on October 16, 2006. Timely motions to intervene in Docket Nos. ER06-1517-000 and ER06-1518-000 were submitted by: WPPI; GLU; MWPG; and Adams-Columbia Electric Cooperative, Central Wisconsin Electric Cooperative and Rock County Electric Cooperative (collectively, Badger Energy Group). GLU, WPPI, and Badger Energy Group each filed timely protests in Docket No. ER06-1517-000. GLU, WPPI and MWPG, filing jointly, (collectively, Wisconsin Publics) and Badger Energy group filed timely protests in Docket No. ER06-1518-000. On October 31, 2006, WPL filed an answer to the protests in Docket No. ER06-1517-000 and an answer to the protests in Docket No. ER06-1518-000. On November 13, 2006, Wisconsin Publics filed a response to WPL's answers. On November 20, 2006, Badger Energy Group filed an intervention to the complaint.[2]

1. WPPI's Protest in Docket No. ER06-1517-000

8. WPPI argues that the proposed changes to rates, rate design and terms and conditions are prohibited by the PSA and various agreements, including two related settlement agreements, and are not just and reasonable. WPPI also contends that such changes can only become effective after Commission approval.

9. WPPI argues that the PSA contains a "*Mobile-Sierra*" public interest standard of review clause prohibiting unilateral changes by either party.[3] WPPI also states that section 2.2 of the PSA requires that the PSA controls in the event of a conflict between the PSA and the PR-1 Tariff. WPPI argues that WPL has acted unilaterally and also that the proposed changes create a conflict between the PSA and the PR-1 Tariff.

[2] The Commission notes that Badger Energy Group's intervention to the Complaint, in which it requests consolidation, appointment of a Settlement Judge and a Settlement Conference, was filed in Docket Nos. ER06-1517-000 and ER06-1518-000.

[3] *See* WPPI Protest at 6, *citing United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956); *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (*Mobile-Sierra*).

Accordingly, WPPI requests that the proposed changes (including the change from a stated rate to a formula rate) be rejected or, if the proposed changes are accepted, WPPI requests that the Commission make such changes effective only after a final order is issued.

10. Specifically, WPPI states that in addition to rate changes, WPL is proposing impermissible changes to terms and conditions. For example, WPL's proposed minimum energy purchase requirement in section 3(a) of the PR-1 Tariff would require WPPI to take-or-pay for a block of energy at a 100 percent load factor. In contrast, WPPI states that the PSA and two prior settlement agreements[4] allow for flexibility in scheduling energy without an obligation to take service at a 100 percent load factor, match a customer profile or take any energy at all, and emphasizes that the settlement agreements prevent such changes from going into effect until after Commission approval.

11. In addition, WPPI maintains that WPL is attempting to limit WPPI's current right to change day-ahead energy schedules on a "reasonable notice" basis, by proposing that all baseload energy must be scheduled on a daily basis one day in advance and consistent with "wholesale market scheduling procedures." WPPI argues that this is inconsistent with its right to make intra-day scheduling changes "on reasonable notice" under section 3(i) of the PR-1 Tariff and the October 2002 Letter Agreement.[5]

12. WPPI also argues that WPL's proposal to change billing determinants for peaking service under the PR-1 Tariff from a monthly nomination to an annual nomination is unreasonable and prohibited. WPPI argues the settlement agreements both provide that "the monthly Peaking PR-1 demand charge shall be applied to the greater of 80 percent of WPPI's monthly nomination or the maximum amount of peaking [partial requirements service] scheduled during the month."[6] WPPI also states that this aspect of WPL's

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[4] *See* WPPI Protest at 19-20 (*citing* settlement agreements filed November 6, 2002 in Docket No. ER02-997-000 (November 2002 Settlement) and March 9, 2006 in Docket No. ER04-1135-000 (March 2006 Settlement)).

[5] The October 2002 Letter Agreement, an attachment to the November 2002 Settlement, outlines the requirements WPL applied to WPPI for intra-day scheduling under the PR-1 Tariff and the PSA. It allows WPPI to alter its intra-day scheduling within a 20 MW bandwidth on 45 minute notice.

[6] *See* WPPI Protest at 19-20 *citing* November 2002 Settlement at page 8, section 5.c and March 2006 Settlement at page 7, section 8.c.

proposal is a rate design change and thus cannot go into effect until after Commission approval.

13. Moreover, WPPI argues that the interim rate is unreasonable and contractually barred. WPPI maintains that the interim rate would over-collect revenue by as much as $6.6 million depending on the prevailing load factor. WPPI argues that such an over-collection is a breach of contract and a violation of sound rate design policy. WPPI argues that, if the formula rate revenue is incorrect, then the interim rate revenue is incorrect and circumvents contract provisions that would prevent such a rate design proposal from becoming effective before the Commission's approval. WPPI explains that, although the PSA allows WPL to implement changes that affect its revenue requirement, the elements of the proposal involving reclassifying costs between demand and energy, changes to the methodology for allocating those costs to a particular class of customers, and revising the billing determinants go beyond WPL's revenue requirement and change the rate design of WPPI's current rates. WPPI requests that, if WPL's filing is not rejected, the interim rates should be summarily redesigned to preserve true rate design neutrality.

14. Finally, WPPI raises a host of other issues, including the formula's calculation of long-term debt costs, capital structure, working capital allowance, and amortization expenses, the level of the proposed rate of return on common equity (ROE), the proposed treatment of construction work in progress (CWIP) in rate base, lack of customer auditing rights, and the treatment of partial and full requirements customers as a single class without justification.

2. GLU's Protest in Docket No. ER06-1517-000

15. GLU makes the same arguments as WPPI and requests that the filing be summarily rejected or suspended for the maximum period.

16. In addition, GLU states that it is unclear from WPL's filing whether the proposed interim rate under the PR-1 Tariff is intended to apply to GLU as well as WPPI. GLU states that while WPL currently provides full requirements to two GLU members under the W-3A Tariff, beginning April 1, 2007, service to these members will convert to partial requirements service under the PR-1 Tariff. GLU states that, while its Master Agreement with WPL resembles WPPI's contracts with WPL in providing for rate design changes only on a prospective basis,[7] GLU should be subject to the newly proposed

[7] See GLU Protest at 3-4, citing section 4.3 of the Master Agreement, which was accepted by the Commission in Docket No. ER05-904-000.

formula rate under the PR-1 Tariff when it begins taking partial requirements service on April 1, 2007, rather than the proposed interim rate, unless the Commission suspends the proposal.

3. Wisconsin Publics' Protest in Docket No. ER06-1518-000

17. Wisconsin Publics argue in their protest in Docket No. ER06-1518-000, that WPL's filing should be rejected outright because it violates Commission policy and filing regulations. Wisconsin Publics also argue that the filing lacks adequate cost support, revenue projections, and mathematically coherent tariff sheets. Wisconsin Publics request that the Commission summarily modify WPL's formula, impose a maximum suspension, consolidate Docket Nos. ER06-1517-000 and ER06-1518-000 and set them for hearing.

18. Wisconsin Publics protest the absence of Period II information, which they claim is required by the Commission's regulations and is necessary for proper review of the proposed formula. Also, Wisconsin Publics argue that the filing omits a review and verification protocol for customers and regulators and unreasonably bases the demand charge on year-end rather than 13-monthly or year-beginning/year-end average balances.

19. Wisconsin Publics also raise concerns about other aspects of the filing, including an increase in the distribution demand charge, the treatment of losses on low-voltage facilities, the failure to true-up prior-year coincidence factors, and the proposed treatment of CWIP in rate base.

4. Badger Energy Group's Protest in Dockets No. ER06-1517-000 and ER06-1518-000

20. Badger Energy Group also requests that WPL's proposed rates be suspended for the maximum period and be set for hearing and settlement judge procedures.

5. WPL's Answer to Protests in Docket No. ER06-1517-000

21. WPL argues that WPPI and GLU misunderstand or misrepresent WPL's rate proposals and that it is prepared to defend all aspects of its filing at hearing. WPL states that if it finds any mathematical errors in its filing, it will rectify them during the hearing or in a compliance filing.

22. Specific to GLU's protest of WPPI's interim rate under the PR-1 Tariff, WPL argues that GLU currently lacks standing to challenge the interim rate because GLU is not presently a WPL customer under the PR-1 Tariff. WPL states that, on October 30, 2006, GLU advised WPL that it intends to rescind the requested conversion to service

under the PR-1 Tariff, although no formal notice has been provided. In any event, WPL states that if GLU does take service under the PR-1 Tariff beginning April 2007, GLU should be subject to the proposed PR-1 Tariff formula rate, rather than the interim rate proposed for application to WPPI. In addition, because GLU may become a PR-1 Tariff customer and because the issues surrounding WPL's proposed PR-1 Tariff are similar to those issues with respect to WPL's proposed W2-A and W3-A Tariff changes, WPL does not request denial of the protest.

23. WPL explains that in 2006, WPL, WPPI, GLU and several other customers entered into the March 2006 Settlement, and that the matters settled there are not at issue here. WPL states that the March 2006 Settlement provides that no party to the settlement will propose any change to the settled rates that would be effective prior to July 1, 2006, and, contrary to WPPI's assertions, WPL is not precluded under the March 2006 Settlement from proposing modifications to the PR-1 Tariff related to revenue requirements, cost allocations, or billing determinants.

24. WPL also explains that the March 2006 Settlement imposes no other limitation on WPL's right to propose changes to the PR-1 Tariff except that WPL-proposed changes to rate design and the terms and conditions, not including rate levels, will be effective prospectively after a Commission-approved settlement or after acceptance in a final order.

6. WPL's Answer to Protests in Docket No. ER06-1518-000

25. WPL argues that Badger Energy Group and Wisconsin Publics failed to sustain their arguments for summary relief and maximum suspension of the proposed rates. WPL also requests any hearing be held in abeyance and that a settlement judge instead be appointed if the Commission concludes that the filings should be set for hearing.

26. WPL does not oppose allowing audits or providing information to affected wholesale customers with respect to WPL's annual implementation of its formula rates, using updated cost data and provides a suggested structure for any such audits.

27. WPL clarifies that it is proposing to use 12-monthly average balances in the true-up component of the formula rate and not year-end balances, which are only being proposed for use in developing the base rate component of the formula, as requested by customers who attended a meeting in August 2006 and are intended to minimize capacity charge true-ups to customers.

28. WPL also clarifies its proposed treatment of CWIP and contends that its proposal is consistent with the Commission's regulations that allow recovery of CWIP in rate base.[8]

29. WPL argues that the proposed formula rate produces just and reasonable rates and that the actual capital structure is reasonable and not erroneously inflated beyond WPL's actual ratio of equity to debt.

30. WPL argues that its 11.2 percent ROE falls within the middle range of WPL-specific ROE recommendations made by four credible expert witnesses in two recent but separate, regulatory cases. WPL also argues that its calculation of long term debt costs is reasonable and calculated it pursuant to Commission policy.

31. Finally, WPL argues that, contrary to Wisconsin Publics' objection, it properly requested a waiver from the Commission rules to exclude Period II data in conjunction with its proposed formula rates.

7. Wisconsin Public's Response to WPL's Answers

32. In its response to WPL's answers to the protests, Wisconsin Publics reiterates the arguments made in their protests in Docket Nos. ER06-1517-000 and ER06-1518-000. For example, Wisconsin Publics further argues that WPL failed, in their answers, to adequately respond to and support the issues surrounding WPL's proposed interim rate, proposed minimum energy purchase requirement on PR-1 customers, WPL's deficient tariff sheets that contain formula reference errors and ambiguities, and WPL's requested waiver of Period II information, specifically that a waiver request is not self-implementing, therefore making WPL's filing incomplete.

Wisconsin Publics' Complaint

33. Wisconsin Publics filed a complaint and seeks an investigation, a refund effective date, and consolidation of the three dockets. Aside from the issues raised in the protests, Wisconsin Publics identify claims that it argues are not remediable under FPA section 205, 16 U.S.C. § 824d (2000).

34. Specifically, they argue that some charges will, when set to a just and reasonable level, fall below the level that was established by the settlement in Docket No. ER04-1135-000, *i.e.*, the last clean rate.

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[8] WPL's Answer at 5 n.4 (*citing* 18 C.F.R. § 35.25(c)(3)).

35. In addition, they state that, as set forth in WPPI's protest in Docket No. ER06-1517-000, WPL has placed WPPI in an unreasonable position by acting to change tariff terms, conditions and rate design immediately upon Commission acceptance or even sooner, rather than prospectively from Commission approval as the parties' contracts require.

36. Wisconsin Publics also suggest that the Commission require WPL to make PR-1 Tariff customers whole for the costs of being denied the chance to make intra-day schedule changes. Wisconsin Publics argue that such make-whole payments and quasi-injunctive relief may be necessary to remedy the consequences from scheduling or nomination practices later found to be unreasonable.

37. Notice of the complaint was published in the *Federal Register*, 71 Fed. Reg. 65,802 (2006), with answers, interventions and protests due on or before November 21, 2006. WPL filed a timely answer to the complaint. Badger Energy Group filed a timely motion to intervene, request for hearing and request for consolidation.

38. WPL responds that the complaint should be denied and that the only new issue raised is the allegation that the proposed formula rates will be lower than the current rates established in Docket No. ER04-1135-000's settlement. WPL argues that, while Wisconsin Publics raise this issue, they fail to satisfy the requirements of the Commission's Rules of Practice and Procedure by failing to provide a good faith quantification of the financial impact or burden for their claims.

Discussion

A. Procedural Matters

39. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2006), the timely, unopposed motions to intervene serve to make the entities that filed them parties to the proceedings in which they moved to intervene. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2006), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept WPL's and Wisconsin Public's answers herein because they have provided information that assisted us in our decision-making process.

B. Commission Determination

40. With regard to WPL's filings in Docket Nos. ER06-1517-000 and ER06-1518-000, WPL's proposed rates raise issues of material fact that cannot be resolved based on

the record before us, and are more appropriately addressed in the hearing and settlement judge procedures ordered below.

41. Our preliminary analysis indicates that WPL's proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will accept WPL's proposed rates for filing, suspend them and make them effective, subject to refund, and set them for hearing and settlement judge procedures.

42. In *West Texas Utilities Company*,[9] the Commission explained that when its preliminary analysis indicates that the proposed rates may be unjust and unreasonable, and may be substantially excessive, as defined in *West Texas*, the Commission generally would impose a maximum suspension. In the instant proceeding, our preliminary analysis indicates that WPL's proposed rates may be substantially excessive. Therefore, we will suspend WPL's proposed rates for the maximum five-month period to become effective June 1, 2007, subject to refund.[10]

43. We find that the complaint likewise presents issues of material fact that cannot be resolved based on the record before us. Accordingly, we will set the complaint for investigation, and establish a trial-type evidentiary hearing, under section 206 of the Federal Power Act (FPA).[11]

44. In cases where, as here, the Commission institutes an investigation on complaint under section 206 of the FPA, section 206(b) requires that the Commission establish a refund effective date that is no earlier than the filing of the complaint, but no later than five months subsequent. Consistent with our general policy of providing maximum protection to customers,[12] we will set the refund effective date at November 1, 2006.

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[9] 18 FERC ¶ 61,189 (1982).

[10] As WPPI argues, and as WPL likewise recognizes, the changes in rate design to a formula rate can only be made effective prospectively.

[11] 16 U.S.C. § 824e (2000).

[12] *See, e.g., Seminole Electric Cooperative, Inc. v. Florida Power & Light Company*, 65 FERC 61,413 at 63,139 (1993); *Canal Electric Company*, 46 FERC 61,153 at 61,539, *reh'g denied*, 47 FERC 61,275 (1989).

45. Section 206(b) also requires that, if no final decision is rendered by the refund effective date or by the conclusion of the 180-day period commencing upon initiation of a proceeding pursuant to section 206, whichever is earlier, the Commission shall state the reasons why it has failed to do so and shall state its best estimate as to when it reasonably expects to make such a decision. Based on our review of the filings, we expect that, if this case does not settle, the presiding judge should be able to render a decision within 12 months of the commencement of hearing procedures or, if the case were to go to hearing immediately, by December 31, 2007. We estimate that we would be able to issue our decision within approximately 5 months of the filing of briefs on exceptions and briefs on opposing exceptions, or if the case were to go to hearing immediately by July 31, 2008.

46. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.[13] If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.[14] The settlement judge shall report to the Chief Judge and the Commission within thirty days of the date of designation concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

47. Here, as there are common issues of law and fact, we will consolidate Docket Nos. ER06-1517-000, ER06-1518-000 and EL07-14-000 for purposes of settlement, hearing and decision.

48. Finally, one of the key threshold issues that must be decided in evaluating WPL's proposed revisions to the PR-1 Tariff as it applies to WPPI is whether the proposed revisions are subject to the "*Mobile-Sierra*" public interest standard of review by the parties' various contracts, including the PSA. In order for this threshold issue to be

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[13] 18 C.F.R. § 385.603 (2006).

[14] If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience (www.ferc.gov - click on Office of Administrative Law Judges).

addressed efficiently in the hearing, it is necessary that the PSA be on file with the Commission. Therefore, to the extent that the PSA was not previously filed with the Commission, we direct WPL to file the PSA in a new section 205 filing, within 14 days of the date of this order. Alternatively, if the PSA was previously filed, WPL should submit a letter in this proceeding directing the Commission to the filing and docket in which the PSA was submitted.

The Commission orders:

(A) WPL's PR-1, WA-2 and WA-3 Tariff revisions are hereby accepted for filing and suspended for 5 months, to become effective June 1, 2007, subject to refund, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning WPL's PR-1, WA-2 and WA-3 Tariff revisions. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (E) and (F) below.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning WPPI's complaint. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (E) and (F) below.

(D) Docket Nos. ER06-1517-000, ER06-1518-000 and EL07-14-000 are hereby consolidated for the purpose of settlement, hearing and decision.

(E) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2006), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(F) Within thirty (30) days of the date of designation, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(G) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, N.E., Washington, DC 20426. Such conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(H) The refund effective date established pursuant to section 206(b) of the Federal Power Act is November 1, 2006.

(I) WPL is directed to either file the PSA in a new section 205 filing or inform the Commission of the previous section 205 filing in which the PSA was submitted, as discussed in the body of this order.

By the Commission. Commissioner Moeller not participating.

(S E A L)

Magalie R. Salas,
Secretary.